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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/785,809      | 02/15/2001  | Serge Willenegger    | 000451              | 4141             |

23696 7590 08/09/2004

Qualcomm Incorporated  
Patents Department  
5775 Morehouse Drive  
San Diego, CA 92121-1714

EXAMINER

PHU, PHUONG M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

2631

DATE MAILED: 08/09/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

09/785,809

Applicant(s)

WILLENEGGER, SERGE

Examiner

Phuong Phu

Art Unit

2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 June 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,2,6-10,12-18,21,22 and 26-31 is/are rejected.  
7) ☒ Claim(s) 3-5,11,19,20 and 23-25 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4.5.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1, 2, 6-10, 12-18, 21, 22 and 26-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Tidemann, Jr et al (6,108,372), provided in the IDS filed on 2/15/01.

As per claims 1, see figures 1, 2 and 5, and col. 5, line 27 to col. 8, line 7, Tidemann, Jr et al discloses a method (see figures 5 and 7) and associated system (see figures 1 and 2) comprising a transmitter located in a base station for encoding data in a frame in a plurality of frames to be transmitted with one of permissible transmission rate formats (see figure 1), and a receiver located in a user terminal (figure 2) of receiving said frame, wherein the method/system (see figure 2) comprises:

step/means (36) of prioritizing a plurality of permissible transmission rate formats, resulting in a prioritized order; and

step/means (34, 42) of decoding data according to one or more of said permissible transmission rate formats in said prioritized order, and if said decoding according to one of said

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permissible transmission rate formats is successful, selecting the corresponding permissible transmission rate format as the correct transmission format.

As per claim 2, Tidemann, Jr et al discloses that said prioritizing comprises step/means of determining a metric (PRIORI PROBABILITY DISTRIBUTION) for each of said plurality of permissible transmission rate formats; and step/means of ordering said permissible transmission rate formats (in TEST SEQUENCE OF DATA RATES) according to said metrics to form said prioritized order (see figure 5).

As per claim 6, Tidemann, Jr et al discloses that a transmission frame includes a format of overhead bits indication for error detection and correction for said transmission frame (see col. 4, lines 55-62); and said metrics are a function of historical data (see col. 7, lines 30-55).

As per claim 7, Tidemann, Jr et al discloses that said historical data comprises statistics of occurrences of said permissible transmission rate formats (inherently indicating a number of occurrences of said permissible transmission rate formats) during a time interval of plural frames (see col. 7, lines 55-58).

As per claim 8, Tidemann, Jr et al discloses that the metrics comprises tracking a number of occurrences corresponding to each of said permissible transmission rate formats over a time interval of plural frames, and calculating said metrics using said number of occurrences of the corresponding permissible transmission rate format (see col. col. 7, lines 30-55).

As per claim 9, Tidemann, Jr et al discloses that said time interval of plural frames ends prior to the unsuccessful decoding of the frame (see figure 5).

As per claim 10, Tidemann, Jr et al discloses that the frame is one of plural frames transmitting a block of data wherein each of said metrics is a function of number of occurrences

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of the corresponding permissible transmission rate formats over said block of data (see col. 7, lines 55-58).

As per claim 12, Tidemann, Jr et al discloses that said decoding comprises decoding the data according to each of said permissible transmission rate formats in said prioritized order until the data is correctly decoded, or until said permissible transmission rate formats have been exhausted (see figure 5).

As per claim 13, Tidemann, Jr et al discloses that only those permissible transmission rate formats having a metric within a range of  $n$  data rates are included in said prioritized order (see col. 8, lines 55-60 and figure 7).

As per claim 14, Tidemann, Jr et al discloses that said decoding (34, 44) comprises partially decoding (34) until it can be determined whether said decoding is successfully (see figure 2).

Claims 15 and 16 are rejected with reasons set forth for claims 1, 2 and 12.

As per claim 17, as applied to claims 1 and 2, Tidemann, Jr et al further discloses that said decoding comprises reporting an error report to stop an operation upon exhausting said permissible transmission rate formats (see figure 5).

Claims 18 and 21 are rejected with reasons set forth for claims 1, 2 and 8.

Claims 22 and 26-28 are rejected with reasons set forth for claims 1, 2, 6, and 12-14.

Claims 29 and 30 are rejected with reasons set forth for claims 1, 2, 6 and 12.

As per claim 31, Tidemann, Jr et al discloses said transmitter and receiver are located in a base station and a user terminal, respectively (see figure 1, and col. 5, lines 27-30).

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*Allowable Subject Matter*

2. Claims 3-5, 11, 19, 20 and 23-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

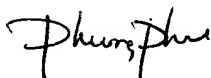
*Conclusion*

3. Reference (6,560,744) is additionally cited because they are pertinent to the claimed invention.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Phu whose telephone number is 703-308-0158. The examiner can normally be reached on M-F (8:30-6:00) First Monday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ghayour can be reached on 703-306-3034. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phuong Phu  
05/12/04

**PHUONG PHU**  
**PRIMARY EXAMINER**

Phuong Phu  
Primary Examiner  
Art Unit 2631